

MAINE REVENUE SERVICES
(FORMERLY BUREAU OF TAXATION)
SALES/EXCISE TAX DIVISION
RULE NO. 322

SALES OF FOOD PRODUCTS

SUMMARY: Interprets the Sales and Use Tax Law as it pertains to sales of food products.

.01 Definition.

A. As used in 36 M.R.S.A. Sec. 1760(3), the following term has the following meaning:

1. "Ordinarily" means more than 75%.

.02 Immediate consumption on or near the location of the retailer.

"Immediate consumption on or near the location of the retailer", as used in 36 M.R.S.A. Sec. 1760(3-C), occurs when:

- a. Food products are eaten on the retailer's premises, or
- b. when the commencement of consumption is observable within view of the retailer's premises.

NOTE: In determining which food products are ordinarily consumed on or near the retailer's premises, "food product" will be considered a grouping of similar food items. For example, dairy products will include milk, cheese, ice cream, butter, etc. Bakery products will include breads, rolls, cookies, pies, donuts, cupcakes, etc.

.03 Food products for consumption without further preparation or storage.

"Food products for consumption without further preparation or storage", as used in 36 M.R.S.A. Sec. 1760(3-D), include those which do not require heating, processing or refrigeration prior to consumption.

NOTE (1): Single serving containers of fruit juices, milk and chips, sandwiches, hot food, single serving salad dishes, individually wrapped pastries, etc., are presumed to be food products ordinarily consumed as sold. Therefore, for example, a retail location whose gross receipts from the sale of sandwiches, heated food or drinks, ice cream novelties and single serving items, constitutes more than 75% of its food sales is required to collect sales tax on the single serving items.

NOTE (2): Food products such as whole breads, cakes, gallons of milk, canned goods, cold cuts and cheeses sold by the pound, bulk ice cream, etc., are generally presumed to require further preparation or storage.

.04 Heated food or drinks and sandwiches.

"Heated food or drinks and sandwiches" as used in 36 M.R.S.A. Sec. 1760(3-E), includes:

- a. Food products prepared for sale in a heated condition regardless of cooling which may occur before or after the sale.
- b. Food products consisting of a filling such as meat, cheese, fish, jam, etc., on or within slices of bread, rolls or bagels, etc.

NOTE: Heated food or drinks and sandwiches are subject to tax irrespective of the type of retail location from which they are sold.

Effective Date: August 12, 1986